IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 19201 of 2004

Between:

M/s.Sri Guru Raghavendra Traders, D.No.12-15-36, P.J.N.Road, Tarapet, Vijayawada, rep., by its Partner Sri S.Venkateswara Rao

..... PETITIONER

AND

1 Commercial Tax Officer, Convent Street, Vijayawada.
2 Regional Vigilance and Enforcement Wing, Vijayawada.
3 Deputy Commissioner (CT), No.I Division, Vijayawada.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ or order or direction particularly one in the nature of writ of mandamus declaring that all chemicals, other than those specified elsewhere, fall within the purview of Entry 9 of the Sixth Schedule and accordingly hold that all such chemicals are taxable at 8% under Item 9 of Schedule of the APGST Act read with G.O.Ms.No.910 Rev. dt.31-12-1999 and quash the provisional

assessment order passed by the first respondent dt.25-9-04 passed in Assessment No.3940/2003-04 or to pass such further or other orders.

Counsel for the Petitioner:MR.S.KRISHNA MURTHY

Counsel for the Respondent No.: GP FOR COMMERCIAL TAX Spl. S.C. for Commercial taxes, Mr. K.Raji reddy.

The Court made the following :

ORDER (Per MHSA,J)

The petitioner in the writ petition, seeks a direction that the product 'Calcium Carbide' is liable to tax at the rate of 8%.

2. When the writ petitions were filed for the above direction and also questioning the provisional assessment order, interim directions were issued by this Court, staying the collection of disputed tax, subject to payment of fifty percent of the tax within a period of six weeks from the date of order.

3. According to the petitioner, the Sales Tax Appellate Tribunal in the case of ***Veeranjaneya Enterprises vs. State of Andhra Pradesh*** has held that 'Calcium Carbide' does not fall under Entry 9 of the Sixth Schedule "Dyes and Chemicals" and the product 'Calcium Carbide' though a chemical, would fall under the Seventh Schedule.

4. However, it is not in dispute before us that the State, in exercise of the powers conferred on it by sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957, has issued directions to the effect that the rate of tax on the sale of 'Calcium Carbide' in the State, shall be at eight paise in the rupee, up to 30-09-2004 only, irrespective of its classification, under the said Act.

5. The copy of the aforesaid notification of G.O.Ms.No.1021 Reveue (CT.II), dated 13th December 2004, published in the Andhra Pradesh Gazette Part-I Extraordinary, bearing No.526, dated 18th December 2004, has been placed before us.

6. As admittedly, in the case on hand, the period is prior to 30-09-2004, it has to be held in terms of the said Gazette that the rate of tax on the sale of 'Calcium Carbide' in the State shall be at 8%.

7. Accordingly, the petitioner shall be entitled to refund of the taxes deposited. While giving effect to the orders of the Government in the Gazette Notification No.526, dated 18th December 2004, it is hereby directed that the respondents shall consider the matter and refund the tax deposited by the petitioner pursuant to the interim orders of this Court.

8. The writ petition is accordingly allowed. No costs.

M.H.S. ANSARI, J

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T.Ch. SURYA RAO, J

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the seventeenth of Febturary, two thousand and five.

Asst. Registrar.

17th February, 2005

AVS

To

1 Commercial Tax Officer, Convent Street, Vijayawada.
2 Regional Vigilance and Enforcement Wing, Vijayawada.
3 Deputy Commissioner (CT), No.I Division, Vijayawada.

4. To C.Cs. to G.P. for Commercial Taxes, A.P. High Court,

Buildings (O.U.T.).

5. Two C.D. copies.